

Court File No. _____

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION (GENERAL)**

BETWEEN:

ANDREW ABBASS

APPLICANT
(Respondent)

AND

**THE ATTORNEY GENERAL OF CANADA and
ATTORNEY GENERAL OF NEWFOUNDLAND AND LABRADOR**

RESPONDENT
(Respondent)

**MEMORANDUM OF ARGUMENT OF THE APPLICANT
ANDREW ABBASS**

SUMMARY OF CURRENT DOCUMENT

Court File Number(s):	
Date of Filing of Document:	February 23 rd 2015
Name of Filing Party or Person:	Andrew Abbass
Application to which Document being filed relates:	Application for order of repeal under <i>The Constitution Act, 1982</i> , Schedule B to the <i>Canada Act 1982 (UK)</i> , 1982, c 11, s 52(1)
Statement of purpose in filing:	To support application and seek direction
Court Sub-File Number, if any:	

Andrew Abbass	
Applicant	

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APPLICANT'S MEMORANDUM OF ARGUMENT

PART I. STATEMENT OF FACTS

OVERVIEW

1. Andrew Abbass (the "Applicant") submits that ss. 318(3), 319(6) and 320(7) (the "Subsections") of the *Criminal Code*¹ violate s. 52(1) of the *Constitution Act, 1982*² and hence are not compliant with ss. 7 and 15(1) of the *Charter* and subject to remedy under ss. 24(1) or 52(1) of the *Constitution Act, 1982*.
2. The preamble of the *Charter* recognizes the supremacy of God and the rule of law as founding principles. The Subsections place the consent of the Attorney General above the law and the supremacy of the *Charter* as defined by s. 52(1) of the *Constitution Act, 1982*.
3. The inconsistencies introduced by the Subsections undermine the principles of fundamental justice required by s. 7 of the *Charter* by denying courts of competent jurisdiction the ability to prosecute crimes against humanity and essential human dignity that shock the conscience of Canada.
4. The Applicant therefore believes that his right to equality before, under and in the benefit of and protection of the law guaranteed by s. 15(1) of the *Charter* has been violated by judicial proceedings initiated through exercising his responsibility as a citizen of Canada to uphold Canada's laws.
5. The Applicant submits the Subsections should be recognized as a privilege afforded to the Attorney General for interpreting the laws in good faith, not a right protected by the *Charter*.
6. The Applicant therefore seeks an order rescinding, repealing or revoking the Subsections of the *Criminal Code* as proscribed by s. 52(1) of the *Constitution Act, 1982* or any just remedy the Supreme Court considers appropriate under s. 24(1) of the *Charter*.

¹ *Criminal Code*, RSC 1985, c C-46

² *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 ("*Constitution Act, 1982*" or "*Charter*")

BACKGROUND FACTS TO THIS CASE

Mr. Abbass' filing of the Charge of Incitement towards Genocide

7. On July 16th 2014 the Applicant learned of the deaths of four children on a beach in Gaza. Video coverage and pictures of the aftermath of the event were widely available on social media outlets.

8. On July 17th 2014 while looking for a Canadian response on CBC's website pertaining to the funeral of the 4 children killed the previous day, the Applicant found minimal coverage of the event.

9. During his search, the Applicant discovered a Huffington Post article about a YouTube video the Conservative Party of Canada had quietly released to its Israeli supporters on July 16th 2014.

(Through Fire and Water - <http://youtu.be/Ble-3k5wKV8>)

10. In viewing the video the Applicant was disturbed by the splicing together of military and political footage with aggressive music and quotes from Prime Minister Stephen Harper and the then Foreign Affairs Minister, John Baird.

11. The Applicant showed the video directly to several associates who were also offended by the juxtaposition of aggressive imagery, quotes and music.

12. To better understand the nature of what the Applicant felt was offensive he compiled a transcript of the video to analyze the selected quotes and imagery.

13. In compiling this transcript the Applicant found what he believed to be a sophisticated language of hatred and incitement towards genocide.

14. The purpose of this use of this language, in the opinion of the Applicant, was to incite the Israeli people towards attacking the people of Gaza by implying that their actions were justified and morally correct in the eyes of Canada.

15. The Applicant initially telephoned the RCMP in Ottawa on July 20th 2014 to report the crime but was informed he would have to file the charges through his local jurisdiction.
16. On the morning of July 21st 2014 the Applicant filed charges with the RNC in Corner Brook, Newfoundland. (RNC File number: 2014-42168)
17. As the crime occurred outside RNC jurisdiction a RNC liaison officer was assigned and the charges were forwarded to the RCMP in St. John's, Newfoundland.
18. The Applicant received a phone call from RCMP officer JOHN DOE on July 30th 2014 requesting a meeting for August 1st 2014.
19. The Applicant met with a plainclothes RCMP officer on August 1st, who informed the Applicant that no charges were being pressed.
20. The officer informed the Applicant that the video and statement by the Prime Minister were being considered a governing policy, not criminal and that the Applicant's only option was to vote in the next election.
21. On August 5th the Applicant filed a complaint with the Commission for Public Complaints against the RCMP. (CPC File Number: 2014-2339)
22. The Applicant first met with the RCMP officer conducting the investigation on October 22nd 2014 at the RCMP station in Corner Brook, Newfoundland and Labrador.
23. The RCMP have informed the Applicant that as of January 27th 2015 the report compiled by the RCMP officer undertaking the investigation of the complaint has been completed and a Letter of Disposition is to be made available in the coming months. (RCMP File Number: 2014-1030376)

PART II. STATEMENT OF QUESTIONS IN ISSUE

24. The Applicant submits that the process he has undertaken as part of his responsibilities as a Canadian citizen raise the following important issues of law that are of national and public importance:

Issue 1: Do the Subsections violate the rule of law by placing the Attorney General's interpretation of what constitutes incitement towards genocide and the creation and dissemination of hate propaganda above the law?

Issue 2: Does the current form of these Subsections allow a conflict whereby the consent privileges given to the Attorney General by the *Criminal Code* can impede the course of fundamental justice in crimes where he is personally interested?

25. These issues warrant consideration by this Honourable Supreme Court on the basis that:

- (a) These are both fundamental and important questions of law.
- (b) The Subsections have never been tested for *Charter* compliance in this manner.
- (c) Variations of the Subsections are also present in other sections of the *Criminal Code*, with new ones to be inserted by Bill C-51, the *Anti-terrorism Act, 2015*.
- (d) The need to have these issues addressed is pressing, and the objective is both proportional and justifiable to maintain a free and democratic society.
- (e) The means are rationally connected to the objective and result in the minimal impairment of rights of all Canadians.

PART III. STATEMENT OF ARGUMENT

This is a Case that Raises Issues of National and Public Importance

26. Incitement towards genocide and the creation and dissemination of hate propaganda are crimes made infamous by the Nationalist Socialist Party of Germany. Sections 318, 319, and 320 of the *Criminal Code* were drafted with the legislative intent of criminalizing these types of behaviors before they can do substantial harm to the public good.

27. The potential for the impairment of justice on these matters through conflicting interpretations of the *Criminal Code* has a significant impact on Canadians. Laws expected to provide protection to citizens from the abuses of authority that allowed Nationalist Socialist Germany to undertake the Holocaust should not allow for interpretations capable of impeding fundamental justice in matters that shocks the conscience as required by s. 7 of the *Charter*.

28. To that end, the *Criminal Code* together with the *Charter* have the expectation of being designed with the legislative intent of protecting the rights and freedoms of law abiding citizens by ensuring that a proper legal framework exists to have such matters addressed by the judicial system in a timely and just manner. Delaying justice on a matter involving the incitement towards hatred and the dissemination of hate propaganda has the effect of increasing the damage to society and the public good on a national and global scale.

29. In the opinion of the Applicant, The RCMP and Commission for Public Complaints against the RCMP do not have the legal authority to engage in a proper and timely balancing of the importance of the rights at stake in this matter.

30. Section 15(1) of the *Charter* states that every individual is equal before and under the law and has the right to equal protection and equal benefit without discrimination. In dismissing the charges

with no legal justification offered or route for appeal, the Applicant believes his right to engage the legal process in a matter of grave importance have been violated, thereby allowing a court of competent jurisdiction to proscribe just remedy under s. 24(1) of the *Charter* in consideration of the circumstances of the violation.

31. The Applicant filed his Originating Application to bring this matter before this Honourable Supreme Court as a self-representing citizen to advance the pursuit of fundamental justice in the spirit of good faith and the public interest.

32. The Applicant recognizes the Supreme Court of Canada's acknowledgement of good faith as it applies to the matter of contractual obligation is an organizing principle from which the Court manifests its interpretation of the Common Law of Contracts:

There is an organizing principle of good faith that parties generally must perform their contractual duties honestly and reasonably and not capriciously or arbitrarily. An organizing principle states in general terms a requirement of justice from which more specific legal doctrines may be derived. An organizing principle therefore is not a free-standing rule, but rather a standard that underpins and is manifested in more specific legal doctrines and may be given different weight in different situations. It is a standard that helps to understand and develop the law in a coherent and principled way.³

33. While the opinion of individual citizens on legal matters carries little weight in determining the proper course of the law, the ruling of this Honourable Supreme Court can provide guidance and direction to the Applicant and other citizens of Canada in determining an expeditious, lawful and just remedy to maintain a free and democratic society.

Issue 1: *Charter*-Compliance of *Criminal Code* 318(3), 319(6) and 320(7)

34. The provisions added by ss. 318(3), 319(6) and 320(7) of the *Criminal Code* are a direct violation of the legal principle of the rule of law in that they allow the consent ("arbitrary decision") of the Attorney General ("individual government official") to govern the prosecution of criminal justice.

³ Bhasin v. Hrynew, 2014 SCC 71 at para 9, Cromwell J

35. By placing the Attorney General's consent above the law in question, the Subsections violate the founding principles of Canada elucidated in the preamble of *Charter* which recognize both the supremacy of God and the rule of law.

36. The original legislative intent of inserting the Subsections may have been to prevent charges from being filed for spurious reasons, but they also limit a citizen's lawful ability to seek fundamental justice for crimes that shock the conscience committed by the federal government under their associated sections of the *Criminal Code*, violating s. 7 of the *Charter*.

37. The equality rights provided by s. 15(1) of the *Charter* have been interpreted by the Court to be aimed at preventing :

"violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political and social prejudices, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration."⁴

38. As crimes against humanity represent a grave violation of essential human dignity, the Applicant has taken a purposive approach towards the disadvantages created by these Subsections, which are prescribed by the law of the *Criminal Code*, but are as yet unjustified when balanced against the equality rights provided by s. 15(1), the principle of fundamental justice required by s. 7, or the aim of maintaining a free and democratic society mandated by s. 1 of the *Charter*.

39. The Applicant respectfully submits that grounds exist to rescind, repeal or revoke the Subsections through application of s. 52(1) of the *Constitution Act, 1982* or any just remedy the court deems appropriate under s. 24(1) of the *Charter*.

⁴ *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497, 1999 CanLII 675 (SCC)

Issue 2: Potential Consent-based Conflicts Of Interest in the *Criminal Code*

40. Denying the ability of the judiciary to prosecute crimes of this nature without the consent of the Attorney General creates the potential for a conflict of interest. It is difficult to envision a person who would forfeit the power of consent to the prosecution of a crime of which he may be found complicit.

41. Furthermore, several other instances of the language of the Subsections are found throughout the *Criminal Code* that can deny prosecution. Taken in this manner, they grant the Attorney General the ability to consent to a number of unconscionable criminal acts instead of prosecuting them.

42. These consent clauses are found in a wide range of laws, some of which are quite concerning when examined for their potential for abuse. The following list illustrates the possibility of crimes from the *Criminal Code* that can be committed with this embedded privilege providing immunity to prosecution:

- 7(2.33) – offenses occurring in Space
- 7(4.3) – sexual offenses against children
- 7(7) – denying prosecution of criminal foreign nationals
- 54 – assisting a deserter
- 83.24 – terrorism, hiding terrorist property, banking with terrorists
- 136(3) – providing false evidence
- 141(2) – bribery
- 164(7) – voyeurism, corruption of morals, child pornography, advertising sexual services
- 283(2) – kidnapping
- 318(3) – advocating genocide
- 319(6) – public incitement of hatred

- 320(7) – denying seizure of hate propaganda
- 347(7) – allowing criminal interest rates
- 385(2) – concealing title documents
- 422(3) – breach of contract, intimidation and discrimination against trade unionists
- 477.2(1) – offenses by a non-citizen on a foreign ship in Canadian waters
- 477.2(2) – offenses in the economic zone of Canada by citizens or in relation to citizens
- 477.2(3) – offenses committed in non-recognized states (ie: Palestine)
- 477.3(3) – piracy
- 810.01(1) – intimidation of the criminal justice system or a journalist
- 810.2(1) – threatening violence, endangering safety, inflicting psychological damage and various forms of sexual assault

43. While the list of Attorney General Consent clauses presented is neither complete nor exhaustive, there is a pattern in that the majority of the implementations of the clause have the potential to be exceptionally socially damaging crimes that can shock the conscience of society.

44. In addition the *Anti-Terrorism Act, 2015* introduces new consent clauses using the same language with the legislative intent of further impeding the judicial process without due oversight.

45. In the light of how the Subsections already been identified to have the potential for abuse, the Supreme Court has the opportunity to provide guidance in ensuring that the principle of good faith is applied not only to common law contracts, but the social contract that provides for a continuance of good faith between Canadian citizens.

Summary and Conclusion

46. In certain circumstances there may be justification for violations of the rule of law that protects the good of society. However, they must infringe on both fundamental justice and legal equality only to such reasonable limits as can be demonstrably justified in good faith as being solely in defense of a free and democratic society.

47. While under s. 52(1) of the *Constitution Act, 1982* the Subsections would be found to have no force or effect, a just remedy amendment under s. 24(1) of the *Charter* that inserted “unless interested” at the end of each sentence would offer a means of differentiating between a justifiable good faith violation and a criminal action perpetrated for personal gain.

48. In this, the Applicant submits adherence to both the letter and the spirit of the law of the *Charter* and the *Criminal Code* mandates the recognition of the supremacy of God as providing the foundation for good faith arguments on these issues.

49. The only measure available to uphold the supremacy of God as a founding principle of the *Charter* is provided through scripture. The Prophet Daniel offers a verse the Applicant witnesses as containing relevance to these proceedings in the Supreme Court of Newfoundland and Labrador and should be acknowledged when providing guidance to Canadians:

*But the judgment shall sit, and they shall take away his dominion, to consume and to destroy it unto the end.*⁵

50. The Applicant respectfully submits that considering the magnitude and import of these fundamental questions of law, the Supreme Court has no other option but to rule in favor of abolishing the dominion established by the Subsections, thereby ensuring the Charter mandated principles of the rule of law and supremacy of God.

⁵ Daniel 7:26 (KJV)

PART IV. COST SUBMISSIONS

51. The Applicant is not seeking costs.

PART V. NATURE OF ORDER SOUGHT

52. The Applicant seeks an order rescinding, repealing or revoking ss. 318(3), 319(6) and 320(7) of the *Criminal Code* under s. 52(1) of the *Constitution Act, 1982*, or amending them by adding “unless interested” at the end of each subsection, or any just remedy the Court considers appropriate under s. 24(1) of the *Charter*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the City of Corner Brook in the Province of Newfoundland and Labrador this 23rd day of February, 2015.

Andrew Abbass
Applicant

PART VI. TABLE OF AUTHORITIES

CASES	Paragraph(s)
Bhasin v. Hrynew, 2014 SCC 71 at para 9, Cromwell J	32
Law v. Canada (Minister of Employment and Immigration), [1999] 1 SCR 497, 1999 CanLII 675 (SCC)	37
STATUTES	
<i>Criminal Code</i> , RSC 1985, c C-46 ss. 318, 319 and 320	1-5, 24-28, 34-36, 38-45, 47, 48, 52
<i>The Constitution Act, 1982</i> , being Schedule B to the <i>Canada Act 1982</i> (UK), 1982, c 11	1-6, 24, 25, 27, 28, 30, 33-39, 46-49, 52